IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17354 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GHANSHYAM ALIAS KANIYO RAMCHANDRA SHARMA

Versus

COMMISSIONER OF POLICE AHMEDABAD

Appearance:

1. Special Civil Application No. 17354 of 2003

MS BANNA S DUTTA for Petitioner No. 1

Ms Mita Panchal, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 31/03/2004

ORAL JUDGEMENT

The petitioner-detenu has preferred this petition under Article 226 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside an order dated 20.10.2003 passed by

respondent no.1 under section 3(2) of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short, 'the PASA Act') directing detention of the present petitioner on the ground that one offence was registered against the petitioner on 16.10.2003 and two unnamed witnesses had given statements against the petitioner stating that the petitioner was guilty of violating 'public order'. The petitioner was arrested on the date of the order itself and he is under detention since then. The petitioner has challenged the aforesaid order of the detention on various grounds. It has been contended that the petitioner has not committed any violation of public order and that the order has been passed against the petitioner without proper application of mind. That therefore, the order of detention is illegal and deserves to be set aside. The petitioner has, therefore, prayed that the impugned order of detention be se aside and the petitioner may be set at liberty forthwith.

2. On receiving the petition, rule was issued and in response to the service of notice of rule, Ms. Mita Panchal, learned AGP has appeared. She has also submitted affidavit of the detaining officer which is taken on record. At the stage of final hearing, learned Advocate for the petitioner has argued that though one offence has been registered against the petitioner and though two unnamed persons appear to have given some statements against the petitioner, the petitioner is not shown to be a person who could be treated to be a dangerous person or a person who has committed violation of public order and, therefore, the detaining authority ought not to have passed the order in question directing his detention in terms of the said order. The case against the petitioner was that he was involved in one prohibition offence being Prohibition Eastern Wing police station C.R. No.1476/2003. It is also alleged that two witnesses have given statements against the petitioner. On the strength of one prohibition offence and on the strength of two statements of unnamed witnesses, the petition has been detained as bootlegger.

3. The petitioner has challenged the said order on the ground that there was delay in disposing of the representation. That there was a haste in passing the order of detention. The petitioner has, therefore, prayed to set aside the order of detention. Learned Advocate for the petitioner has also contended that the petitioner was in police custody at the time when the order of detention was passed. It has been mentioned in the grounds of detention at page no.31 that on completion of the period of police remand, the petitioner will be

presented to the learned Magistrate and the petitioner would apply for bail and thereafter, he would get himself bailed out and then he would continue with his bootlegging activities.

4. The petitioner has also contended that there is no material on record to show that the petitioner would apply for bail, that he would get himself bailed out and that he would continue his bootlegging activities thereafter. That therefore, the said observations have been made without any material before the authority. in this aspect it would be worthwhile to refer a decision in the case of Amritlal v. Union Government, reported in AIR 2000 SC 3675. The relevant para is reproduced as under:

> "7. The emphasis however, in Binod Singh's case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order."

5. Therefore, it is clear that the detaining authority had no material with him to come to a finding that the petitioner would be presented to the magisterial court and thereafter, he would apply for bail and thereafter he would get himself bailed out and, thereafter he would continue his bootlegging activities. Therefore, the above observation made in the ground of detention is without any material and therefore, the order of detention cannot be sustained in the eye of law.

6. It has also come on record that the petitioner has submitted his representation to the Minister of State, Home Affairs, Gandhinagar on 7.11.2003 at page 31. Postal acknowledgement produced by the petitioner shows that it was received by the said office. Affidavit of the detaining authority is produced by the learned AGP which is taken on record. According to the explanation given in para 17 of the said affidavit, the representation of the petitioner was dealt with on 17.11.2003. However, the delay between 7.11.2003 and 17.11.2003 has not been explained. Learned AGP has tried to argue that the said representation was received by the Minister of State, Homes on 11.11.2003, it was sent to the department on 13.11.2003, then it was received by the Branch on 14.11.2003.The under Secretary processed the same on the same day and produced the same on 16.11.2003 before the Principal Secretary and he decided the same on

17.11.2003. However, these facts do not come from the record. Even otherwise, it is not explained as to why the Minister of State, Home Affairs has not dealt with and decided the representation submitted by the detenu. Apart from the above, the fact remains that there was no immediate need to detain the petitioner as he was already in police custody and it could not be said that there was likelihood of his being released on bail. In view of the two decisions cited as above, the order of detention cannot be sustained in the eye of law.

7. For the foregoing reasons, this petition is allowed. The impugned order dated 20.10.2003 passed by respondent No.1 in exercise of powers under section 3(2) of the PASA Act detaining the present petitioner, is ordered to be set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]

msp